

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

LUANN KAY RUSCH, R.N.,
RESPONDENT.

FINAL DECISION AND ORDER

Order 0000028

[Division of Enforcement Cases 08 NUR 056 & 09 NUR 223]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Luann Kay Rusch, R.N.
1208 Hastings Street
Green Bay, WI 54301

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Board of Nursing
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board of Nursing. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Luann Kay Rusch, R.N., Respondent, date of birth February 3, 1959, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 81404, which was first granted March 26, 1982.
2. Respondent's last address reported to the Department of Regulation and Licensing is 1208 Hastings Street, Green Bay, WI 54301.

PRIOR DISCIPLINARY ACTION

3. On May 26, 1989, the Board issued a Final Decision and Order imposing discipline on Respondent, which:

- a. Found that on May 1, 1987, Respondent:
 - 1) charted administration of a PRN dose of Tylenol #3 (acetaminophen with codeine) to a patient at the same time as routine administration of Tylenol #3 to this patient.
 - 2) incorrectly charted administration of .125 mg of Lanoxin to another patient, when .25 mg of Lanoxin was obtained for administration.
- b. Found that on May 3, 1987, Respondent falsely charted that she administered Thorazine (chlorpromazine) to a patient, when the medication had not been given.
- c. Found that on June 16, 1987, Respondent falsely charted completion of assigned treatments, when in fact she had not completed treatments for the majority of patients assigned to her care.
- d. Suspended her license for an indefinite period and on July 19, 1989, stayed the suspension as long as Respondent was in compliance with treatment, monitoring and practice conditions related to her chemical dependency.

4. On July 19, 1991, all conditions were lifted and Respondent received an unlimited license.

08 NUR 56

5. On January 29, 2008, Respondent was arrested by Green Bay police for suspicion of operating a motor vehicle while under the influence (OWI). A search of Respondent's vehicle revealed an empty prescription bottle of temazepam (a benzodiazepine, and a Schedule IV controlled substance), quantity of 60, filled on January 28, 2008. Respondent admitted to the officer that she had taken all of the pills, then changed her story, but then eventually told the officer that she had taken the pills just to sleep, not because she wanted to hurt herself. Respondent did not pass the field sobriety test and was issued a 2nd offense OWI citation.

6. On March 25, 2008, Respondent was admitted to the Jackie Nitschke Center, Inc., in Green Bay, Wisconsin, for residential AODA treatment. Respondent was diagnosed with opioid and sedative dependence. Respondent completed treatment with some goals attained and was discharged on April 22, 2008. Recommendations included intensive outpatient treatment and attendance at community support groups.

7. On May 22, 2008, Respondent entered the AODA intensive outpatient treatment program (IOP) at Family Services of Northeast Wisconsin, Inc., in Green Bay, with a diagnosis of Opioid Dependence (DSM-IV 304.00). Respondent was discharged on December 19, 2008 after successfully completing the program.

8. On June 2, 2009, Respondent was convicted in Brown County Wisconsin Circuit Court of one misdemeanor count of violating Wis. Stat. § 346.63(1)(a), Operating While

Influenced (2nd), growing out of the incident described in par. 5, above. Respondent was sentenced to 5 days in jail and ordered to pay a fine and costs.

09 NUR 223

10. On July 12, 2009, Respondent entered Parkview Manor Health and Rehabilitation Center (facility), a nursing home in Green Bay from which Respondent had recently been terminated for performance issues. Respondent had no legitimate purpose for being in the facility at this time. Respondent paused at the Activity Bulletin Board and continued down the First Floor South Hall. She was observed pushing Ms. A, a resident who was unable to communicate her needs and was incapacitated, into Ms. A's room, in a wheelchair. Moments later, Respondent walked out of the room and exited the building.

11. Nursing staff went to check on Ms. A, and found that her prescribed fentanyl patch was missing. Fentanyl is an opioid pain medication and Schedule II controlled substance. Police were contacted and nursing staff assessed all other patients with pain patches to ensure that the patches were intact. An in-depth investigation was commenced.

12. The investigation revealed that several staff members had seen Respondent in the building in the past 7-10 days. Each time, she was seen entering the building, going toward the elevator on the First Floor South Hall, and then exiting the building moments later. During the same period of time, the facility had noted that Ms. A began missing pain patches and began an investigation. Staff were required to check placement of the patches at every shift and patches continued to be missed sporadically. Because Respondent visited the facility at different hours and was seen by different staff, some of whom were not aware of the missing pain patches, the connection between the missing pain patches and Respondent's visits was not made until the incident on July 12.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and authority to enter into this stipulated resolution pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by obtaining and/or using a drug other than in the course of legitimate practice and as otherwise prohibited by law, as set out above, has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(2) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

3. Respondent, by her conduct, has abused substances to an extent that such use impairs her ability to safely or reliably practice, as defined by Wis. Admin. Code § N 7.03(2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(c).

ORDER

IT IS ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, effective the date of this Order:

SUSPENSION

- A.1. The license of Luann Kay Rusch, R.N., Respondent, to practice as a nurse in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. The privilege of Respondent to practice as a nurse in the State of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact is also SUSPENDED for an indefinite period.
- A.3. During the pendency of this Order and any subsequent related orders, Respondent may not practice in another state pursuant to the Nurse Licensure Compact under the authority of a Wisconsin license, unless Respondent receives prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory board in the other state.
- A.4. Respondent shall mail or physically deliver all indicia of Wisconsin nursing licensure to the Department Monitor within 14 days of the effective date of this Order. Limited credentials can be printed from the Department of Regulation and Licensing website at <http://drl.wi.gov/index.htm>.
- A.5. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active nursing for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.6. for return of full Wisconsin licensure. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension shall not be stayed for the first six (6) months, but any time after six (6) months, the suspension shall be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
 - (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to

be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.

- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee ("Treater"). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.
- C.11. Respondent shall report to Treater and the Department Monitor all medications and drugs, over-the-counter or prescription, taken by Respondent. Reports must be received within 24 hours of ingestion or administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department ("Approved Program").
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
 - (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.14. The Approved Program shall require the testing of specimens at a frequency of not less than 48 times per year, for the first year of this Order. After the first year, Respondent may petition the Board on an annual basis for a modification of the frequency of tests. The Board may adjust the frequency of testing on its own initiative at any time.
- C.15. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.

- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
- C.18. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.19. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.
- C.20. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee.
- C.21. Respondent shall practice only in a work setting pre-approved by the Board or its designee.
- C.22. Respondent may not work in a home health care, hospice, pool nursing, or agency setting.
- C.23. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.
- C.24. It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter.
- C.25. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.
- D.3. Every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Board

- D.4. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Board on an annual basis for modification of the terms of this Order, however no such petition for modification shall occur earlier than one year from the date of this Order. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.
- D.6. Respondent may petition the Board for termination of this Order anytime after five years from the date of this Order. However, no petition for termination shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least five years.

Costs of Compliance

- D.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

- D.8. Respondent shall pay costs of \$800, to the Department of Regulation and Licensing, before January 5, 2012. In the event Respondent fails to timely submit any payment of costs, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

D.9. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 441.07.

Wisconsin Board of Nursing

By: Marilyn Kaufmann
A Member of the Board

1/28/10
Date

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